



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**BY UPS NEXT-DAY AIR & E-MAIL**

**MAR 29 2019**

Mr. Eugene C. Yu  
Mrs. Jonie H. Yu  
4349 Miller Drive  
Evans, GA 30809

RE: MUR 6824  
Eugene Yu for Congress, Inc., and Donnie  
Miller in his official capacity as treasurer  
Eugene C. Yu  
Jonie H. Yu

Dear Mr. and Mrs. Yu:

On December 22, 2015, the Federal Election Commission (the "Commission") notified Mr. Yu and Eugene Yu for Congress, Inc., and Donnie Miller in his official capacity as treasurer ("Committee") that, based on a complaint filed with the Commission, it had found there is reason to believe the Committee violated 52 U.S.C. § 30104(b), a provision of the Federal Election Campaign Act of 1971, as amended ("Act") by misreporting loans reported by the Committee as coming from Mr. Yu's personal funds. Further, on April 20, 2018, the Office of the General Counsel notified Mrs. Yu of possible excessive contributions she may have made to the Committee in violation of the Act in connection with a \$50,000 home equity line of credit draw used by the Committee and the use of her personal credit card to pay for Committee expenses.

After reviewing responses and information provided by the Committee and both of you and conducting an investigation, the Commission on March 26, 2019, made additional findings. Specifically, the Commission found that there is reason to believe that Mr. Yu and the Committee accepted excessive contributions from Mrs. Yu and Wayne Brown and that Mrs. Yu made excessive contributions to the Committee. The Factual and Legal Analysis, which formed a basis for the Commission's additional findings, is enclosed for your information.

To expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to the Committee and both of you as a way to resolve this matter without the need for briefing the issue of whether or not the

10007444001

MUR 6824  
Eugene C. and Jonie H. Yu  
Page 2

Commission should find probable cause to believe that the Committee and both of you violated the law.

If you are interested in engaging in pre-probable cause conciliation, please contact Dawn M. Odrowski, the attorney assigned to this matter, at (202) 694-1591 or at [dodrowski@fec.gov](mailto:dodrowski@fec.gov). Because conciliation negotiations prior to a finding of probable cause to believe are limited to a maximum of 60 days, it is important that you contact Ms. Odrowski within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. You may also request additional information gathered by the Commission in the course of its investigation in this matter. See Agency Procedure for Disclosure of Documents and Information in the Enforcement Process, 76 Fed. Reg. 34,986 (June 15, 2011). We may request that each of you sign an agreement tolling the statute of limitations if negotiations ensue.

Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if you are not interested in pre-probable cause conciliation or if a mutually acceptable conciliation agreement cannot be reached within the time frame. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Please note that once Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [https://transition.fec.gov/em/respondent\\_guide.pdf](https://transition.fec.gov/em/respondent_guide.pdf). We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Statement of Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

MUR 6824  
Eugene C. and Jonie H. Yu  
Page 3

Please also note that you also have a legal obligation to preserve all documents, records and materials relating to this matter until such time as the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

Also, please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

We look forward to your response.

On behalf of the Commission,



Ellen L. Weintraub  
Chair

Enclosures  
Factual and Legal Analysis

cc: Donnie Miller, in his official capacity as treasurer  
of Eugene Yu for Congress, Inc.

Augusta, GA 30907

<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3  
4 **RESPONDENTS:** Eugene Yu for Congress, Inc. MUR: 6824  
5 and Donnie Miller in his  
6 official capacity as treasurer  
7 Eugene Chin Yu  
8 Jonie H. Yu  
9

10 **I. INTRODUCTION**

11 This matter was generated by a complaint filed with the Federal Election Commission  
12 (the "Commission") concerning an allegation that federal candidate Eugene Yu lacked sufficient  
13 liquid assets to make more than \$730,000 in loans to his 2014 Congressional campaign from his  
14 personal funds.<sup>1</sup> See 52 U.S.C. § 30109(a)(1). The Commission previously found reason to  
15 believe that Eugene Yu for Congress, Inc., and Donnie Miller in his official capacity as treasurer  
16 (the "Committee") violated 52 U.S.C. § 30104(b) by misreporting the source of funds of Yu's  
17 loans as personal funds.<sup>2</sup> The Commission took no action at that time as to whether the  
18 Committee and Yu accepted excessive contributions in violation of 52 U.S.C. § 30116(f).

19 The Commission's investigation indicates that Yu did not have sufficient personal funds  
20 to make the total reported loans to the Committee. Instead, Yu obtained a majority of funds from  
21 Wayne Brown, the Committee's campaign chairman, Brown's company, WayneWorks, LLC,

---

<sup>1</sup> Compl. at 1. Yu's total reported loans to the Committee during the 2014 election cycle was \$790,704, somewhat higher than the amount alleged in the Complaint. Eugene Yu for Congress Factual and Legal Analysis, MUR 6824 ("F&LA") at 2. In addition to the House financial disclosure report, the F&LA also relied on original and amended financial disclosure forms Yu filed with the Secretary of the U.S. Senate because Yu initially ran for a U.S. Senate seat from Georgia before withdrawing from that race to run for a seat in the House. F&LA at 2-5.

<sup>2</sup> Yu had disclosed in his financial disclosure form ownership of real properties of sufficient value from which he could have borrowed against. See F&LA at 8-9.

1 and from his wife, Jonie Yu. Brown made payments to Yu using a combination of cashier's,  
2 personal, and company checks purportedly for the partial sale of a commercial property but the  
3 evidence indicates the payments actually constituted a loan. The majority of Brown's payments  
4 financed campaign expenses. Ms. Yu drew on funds from a home equity line of credit  
5 ("HELOC") held solely in her name that were transferred into the Yus' joint bank account  
6 whereupon Yu immediately wrote a check to the Committee in the amount of the draw. Ms. Yu  
7 also made advances to the Committee in the form of campaign expenses that Yu and the  
8 Committee charged on her personal credit card.

9 Accordingly, the Commission found reason to believe that Jonie H. Yu made excessive  
10 contributions in violation of 52 U.S.C. § 30116(a)(1)(A) and that Eugene Yu and the Committee  
11 received excessive contributions in violation of 52 U.S.C. § 30116(f).

## 12 II. FACTUAL AND LEGAL ANALYSIS

13 Yu sought the Republican nomination for U.S. Senate in Georgia for the 2014 primary  
14 election, filing his statement of candidacy on July 11, 2013, but later dropped out of that race and  
15 announced on February 22, 2014, he would instead seek the Republican nomination for the U.S.  
16 House seat in Georgia's 12th Congressional District.<sup>3</sup> He lost the 2014 primary election. Yu  
17 established a new principal campaign committee when he unsuccessfully sought the Republican  
18 nomination for the same House seat again in 2016 and 2018.<sup>4</sup>

<sup>3</sup> Statement of Organization, Eugene Yu for Senate (July 11, 2013); Walter C. Jones, *Augusta Businessman Yu Switches Senate Campaign to House*, THE AUGUSTA CHRONICLE (Feb. 23, 2014); amended Statement of Organization, Eugene Yu for Congress (Mar. 4, 2014). Despite the Committee's amended Statement of Organization, the Committee's name continues to appear as "Eugene Yu for Senate" in the searchable committee database on the FEC website.

<sup>4</sup> Statement of Organization, Eugene for Congress (Jan. 26, 2016).

1           The Committee's fundraising was minimal from the beginning. As a result, Yu used  
2 funds from a variety of sources to pay for the Committee's expenses. Yu paid for some  
3 Committee expenses during the campaign's exploratory phase beginning in mid-May 2013, from  
4 a joint bank account he held with Ms. Yu. From May 27, 2013, through January 19, 2014, Yu  
5 also charged many Committee expenses on his wife's personal credit card account. On July 17,  
6 2013, days after filing his Statement of Candidacy, Yu transferred funds to the Committee's bank  
7 account from a personal bank account he held jointly with Ms. Yu into which Ms. Yu had just  
8 transferred funds from a draw on her individually-held HELOC. Beginning in August 2013,  
9 Brown soon became the source of most of the campaign's funds through payments made to Yu  
10 pursuant to a real estate transaction involving a commercial property jointly owned by the Yus in  
11 Augusta, Georgia. Brown's payments and Ms. Yu's HELOC loan and credit card advances  
12 comprised most of the Committee's funding.

13           **A. Contributions from Wayne B. Brown & WayneWorks, LLC**

14           **1. Wayne Brown's Role in Yu's Campaign**

15           Wayne Brown is the owner and sole member of WayneWorks, LLC, a limited liability  
16 company, which manages and operates Brown's residential and commercial real estate business  
17 ventures. Brown, a long-standing professional associate and friend of Yu, had a significant role  
18 in Yu's 2014 campaign, serving as the Committee's campaign chairman and handling its  
19 finances after mid-October 2013.<sup>5</sup> The Committee treasurer of record, Donnie Miller, set up the  
20 Committee's bank account and initially performed bookkeeping duties — depositing  
21 contributions and signing checks, reviewing banks statements, and tracking the finances in a

---

<sup>5</sup> Committee/Yu Resp. to Compl. at 2 and Ex. C at 1 (June 5, 2014).

1 register — but Brown and a committee staffer prepared the Committee’s disclosure reports filed  
2 with the Commission beginning with its first report, the 2013 October Quarterly.<sup>6</sup> Miller turned  
3 over responsibility for the Committee’s finances and gave records in his possession to Brown  
4 after Brown became a signatory on the Committee’s bank account on October 17, 2013.  
5 Thereafter, Brown signed most of the Committee’s checks.

6 In the early months of the campaign, Brown, Miller, and Yu, and a changing group of  
7 consultants participated in weekly campaign meetings held in a conference room at Brown’s  
8 business office. Brown rented space in his business office to the Committee, and some  
9 Committee operating expenses, such as office supplies and postage, were apparently charged  
10 through a business account of another of Brown’s companies and billed to the campaign. Brown  
11 also served as the point of contact for some Committee vendors and had a campaign e-mail  
12 address.<sup>7</sup>

## 13 2. The Real Estate Contract

14 Starting in August 2013, Brown made payments to Yu pursuant to a real estate  
15 transaction involving a commercial property on Bertram Road in Augusta, Georgia (the  
16 “Property”) that was jointly owned by the Yus. The transaction was documented in a “Contract  
17 for Partial Sale” (the “Contract” or the “transaction”) dated July 1, 2013, between Brown,

---

<sup>6</sup> Although Miller did not prepare the Committee’s reports or other documents such as Requests for Additional Information from the Commission, he acknowledges signing them at the request of Yu and Brown. The Committee’s reports continued to bear Miller’s electronic signature long after the campaign ended.

<sup>7</sup> See, e.g., Amended Statement of Org., Eugene Yu for Congress at 2 (Mar. 4, 2014).

190044477914

1 through WayneWorks, LLC, and Ms. Yu with Yu's consent.<sup>8</sup> The Contract gave Brown the  
2 option to purchase up to a 50% ownership interest in the Property for \$650,000 over the next  
3 year, and his ownership interest would increase as payments were made.<sup>9</sup> Bank records show  
4 that Brown made fifteen payments to Yu totaling \$645,000 under the Contract from August 19,  
5 2013, through September 14, 2014. Four of Brown's earliest payments, totaling \$50,000, were  
6 deposited directly into the Committee's account and refunded to him, as discussed further below.  
7 Yu deposited the rest of Brown's payments into the Yus' joint bank account, and then wrote  
8 checks to the Committee, or otherwise transferred funds or made deposits into the Committee's  
9 account. The majority of Yu's checks to the Committee were in the same amount as Brown's  
10 payments.

11 Of the \$645,000 paid by Brown under the Contract, \$555,000 can be traced to the  
12 campaign. The \$555,000 figure excludes the aforementioned earliest payments from Brown  
13 totaling \$50,000 that were directly deposited into the Committee's account, three of which were  
14 payable to the Committee. These four payments were refunded to Brown on November 5, 2013,  
15 in connection with a *sua sponte* submission ("*Sua Sponte* Submission" or "Submission") filed

<sup>8</sup> The Contract is between WayneWorks, LLC, and Jonie Yu, and Brown's checks are payable to Yu, even though the real property records filed with the Superior Court of Richmond County show that the Yus have jointly owned the Property since May 12, 2004. The Commission has independently verified through state and local records that the Property remains titled in both of the Yus' names. Moreover, Yu, the Committee, and Brown state that the Yus jointly own the Property (Committee/Yu RTB Resp. at 1, Yu Affidavit ¶ 1 (Feb. 1, 2016) and that Yu consented to the Contract (Committee/Yu RTB Resp. at 1; Yu Affidavit ¶ 1).

In clarifying why Jonie Yu was the only signatory on the Contract, Yu has stated that he and his wife own 35% and 65% of the Property, respectively, through Y&JE, Inc., a company they owned. That may have once been true, but YJ&E, Inc., has not existed as a legal entity since it was administratively dissolved on May 16, 2008. See State of Georgia Secretary of State, Certificate of Administrative Dissolution/Revocation for YJ&E, Inc. (May 16, 2008). The company's name has never appeared in the Property ownership records or in the Richmond County Board of Tax Assessor's records, and rental checks from the Property's tenant during the relevant period are payable to Yu and not YJ&E.

<sup>9</sup> Committee/Yu RTB Resp. at 6-7 ("Contract"). Because WayneWorks is a single member LLC wholly owned by Brown, the reference to Brown when discussing the Contract and payments encompasses WayneWorks.

1 with the Commission in January 2014 on behalf of Yu, the Committee, and others by Yu's first  
2 counsel. That Submission characterized the \$50,000 in payments as "excessive contributions."<sup>10</sup>  
3 The Submission stated that the payments were made in connection with a real estate agreement  
4 between Yu and Brown, later identified as the Contract in the Committee's response to the  
5 Commission's reason-to-believe finding in this matter, and the Committee mistakenly believed  
6 those payments could be treated as Yu's personal funds and paid directly to the Committee,  
7 instead of being first deposited into Yu's personal account.

8 Yu has stated that sometime around the summer of 2013, Yu and Brown discussed a  
9 transaction involving the Property. In an interview, Yu stated that when Brown asked him near  
10 the beginning of the campaign why Yu was not fundraising, Yu told Brown that he did not know  
11 how and asked if Brown could loan him money. Brown asked what Yu had as collateral, and Yu  
12 identified the Property. Yu said he and Brown worked out an agreement that Yu described as a  
13 "loan" and the Property as "collateral," and said that they agreed Brown would provide funds to  
14 the campaign as needed." Yu viewed the arrangement as a "line of credit" guaranteed by the  
15 value of the Property, stating "he'd just write a check to me and I'd write a check to the  
16 campaign." Indeed, Brown wrote the word "loan" on the memo line of Brown's October 23,  
17 2013 payment, a personal check to Yu in the amount of \$5,000; two months later, Brown's name  
18 and the word "loan" were typed above the words "Purchaser/Purchased for" on Brown's  
19 December 18, 2013, payment of \$50,000 that he made to Yu using a cashier's check. On certain  
20 later payments made after the Committee's Submission, Brown wrote "Bertram Road Purchase"

<sup>10</sup> *Sua Sponte* Submission of Eugene Yu for Senate, Inc., *et al.* at 2-3, Pre-MUR 569 (Dec. 6, 2013) at Committee/Yu Resp. to Compl. Ex. C. Brown used the refund to make subsequent payments to Yu. Committee/Yu RTB Resp. at 2. Though the Submission is dated December 6, 2013, it was not received by the Commission until January 23, 2014.

1 on the memo line. Yu says they agreed that Brown would be repaid with interest after the  
2 Property was sold and Brown agreed to wait until then to be repaid. Yu volunteered that the  
3 Committee's first counsel, retained during the campaign, advised them to draw up an agreement.

4 The Contract, apparently drafted by Brown, provides Brown with "the right to purchase"  
5 within twelve months up to 50% of the Property's "total value of \$1.3 million dollars" for  
6 \$650,000.<sup>11</sup> It simultaneously conveys ownership to Brown during the option period, stating that  
7 Brown will "earn ownership" as monies are paid under the Contract; it makes no reference to the  
8 timing of any payment. The Contract further provides that the Yus will "convey the percentage  
9 purchased" and record a marketable title and limited warranty deed with the county "at time of  
10 [Brown's] choosing." It further gives the Yus the right of first refusal to repurchase Brown's  
11 ownership interest for the amounts he paid plus 8% interest. Another provision states that if the  
12 Yus are unable to convey marketable title, they will not be required to expend funds to correct  
13 any title defects but need only cancel the agreement and return to Brown all payments he made  
14 and reimburse him for the costs of any surveys and title examination. The Contract places  
15 responsibility for all property taxes and utility costs on the Yus and permits them to continue to  
16 collect rental income unless the Property is developed, in which case Brown shares in the income  
17 but not the expenses.

18 Although Yu's interview statements differ from the position in his and the Committee's  
19 RTB response, his statements are supported by other evidence uncovered during the investigation  
20 and the contractual language itself, all of which show that the transaction between Brown and Yu

<sup>11</sup> Committee/Yu RTB Resp. at 5-6 (Contract).

1 was intended to as a loan to provide Yu with funds for his campaign rather than a *bona fide*,  
2 arms-length sale.<sup>12</sup>

3 First, the Contract itself contains unusual provisions for a real estate transaction. Though  
4 styled as a partial sale, it also purports to be an option to purchase that provides Brown with “the  
5 right to purchase” within twelve months up to 50% of the Property’s value while simultaneously  
6 conveying proportionate ownership to Brown during the option period as monies are paid.  
7 Notably, the Contract provides that the Yus will “convey the percentage purchased” and record a  
8 marketable title and limited warranty deed with the county “at the time of [Brown’s] choosing,” a  
9 provision Yu’s second counsel characterized as “unconventional.” And, despite Brown’s  
10 accruing ownership interest, the Contract places responsibility for all property taxes and utility  
11 costs on the Yus and permits them to continue to collect rental income unless the Property is  
12 developed, in which case Brown shares in the income but not the expenses. Finally, the Contract

<sup>12</sup> To aid in determining whether a violation took place in connection with a financial transaction, the Commission typically examines the facts and circumstances involved, including in matters involving financial transactions between a candidate and an individual or entity. *See, e.g.*, PC Br. at 4-10 and Conciliation Agreement, MURs 4128 and 4362 (Grant Lally/Lally for Congress, *et al.*) (Commission accepted a probable cause conciliation agreement where Respondents admitted, *inter alia*, knowingly and willfully accepting excessive contributions from candidate’s father in the form of proceeds from a purported sale of the candidate’s interest in real property reported as a personal loan to the Committee); Conciliation Agreement ¶¶ 22, 30-35, MURs 4818 and 4933 (Walter L. Roberts and Walt Roberts for Congress) (Commission accepted a probable cause conciliation agreement in which Respondents admitted knowingly and willfully accepting excessive contributions from a former state senator involved in the campaign disguised as legitimate transactions, including consulting work never performed, a cattle sale that never occurred, and an option contract for partial interest in candidate’s artwork that, in fact, financed campaign media buys); Gen. Counsel’s Rept. #3 and Certification (Mar. 20, 2002), MUR 4825 (Gex Williams) (Commission closed the file after finding RTB that proceeds from a sale of ten acres of a candidate’s farm were excessive contributions based on a Commission-financed appraisal and title search establishing the purchaser had not paid more than the land’s fair market value); Factual and Legal Analysis at 7-12, MUR 7025 (Senator Mike Lee) (Commission found that no excessive contributions resulted from a bank’s waiver of the deficiency balance on a candidate’s home mortgage as part of a short sale or from the individual who purchased the home in the short sale and rented another home to the candidate because the factual circumstances indicated the transactions were not for campaign purposes).

1 permits the Yus to cancel the Contract and return *all payments* to Brown plus the costs, if any,  
2 Brown made for surveys and title examination without requiring them to clear the title.<sup>13</sup>

3 Second, despite Brown's payments and asserted ownership interest, the Yus have not  
4 conveyed to Brown or recorded with the clerk of the superior court a marketable title and limited  
5 warranty deed evidencing Brown's ownership interest.<sup>14</sup> According to Yu and the Committee,  
6 Brown had not yet exercised the "unconventional" contractual provision permitting him to  
7 choose when the Yus would convey and record his ownership interest because Brown preferred  
8 to remain a "silent owner" for personal and professional reasons due to the nature of the business  
9 operating on the Property. Yu identified the business operating on the Property as a nightclub  
10 and stated that Brown did not want to deal with the possible tax and liability issues associated  
11 with ownership. Bank records and publicly available information show that a nightclub, XS  
12 Live, occupied the building from at least April 2013 through December 2014 and paid rent from  
13 beginning in April 2013 through mid-January 2015.<sup>15</sup>

14 Third, Yu acknowledges that Brown did not obtain an independent appraisal of the  
15 Property's value before executing the Contract. Rather, Yu maintains they relied on the fair  
16 market value of comparable surrounding properties and his and Brown's experience in the

---

<sup>13</sup> This provision appears to be modified boilerplate language used in form real estate purchase and sale agreements that allow a *buyer* to terminate an agreement without penalty *prior to the payment of the purchase price* at closing if a seller fails to correct any title defect affecting marketability. See, e.g., Georgia Realtors Purchase and Sale Agreement at Pars. B1 and B3 available at [http://images.kw.com/docs/2/6/0/260467/1457366655434\\_2016SSOfferPackage.pdf](http://images.kw.com/docs/2/6/0/260467/1457366655434_2016SSOfferPackage.pdf). As written in this Contract, which contemplates Brown making periodic payments during the option year and allows him to choose when to request marketable title and a limited warranty deed, the Yus can simply cancel the agreement and return Brown's payments.

<sup>14</sup> A recent check of county records confirms that a new deed still has not been recorded.

<sup>15</sup> See XS Live Business License (showing XS Live had a liquor license through December 31, 2014). Following a renovation, a second nightclub, Mitty's, occupied the property from April 2015 through approximately May 2016. See Jenna Martin, *New Dance Club Aims at Appealing to Broader Audience*, THE AUGUST CHRONICLE (Apr. 22, 2015) and Mitty's Business License (showing Mitty's had an active liquor license through May 12, 2016).

1 commercial property market. According to the Committee and Yu, the \$1.3 million figure was  
2 based on the fair market value of comparable surrounding properties and its “desirable location”  
3 near Augusta National Golf Club. Yu says he relied on his knowledge of local real estate market  
4 conditions.

5 However, since the date of the Contract, the Yus have listed the Property for sale at a  
6 much lower price than the \$1.3 million figure listed on the Contract and have taken actions  
7 seeking to further lower the Richmond County Board of Assessors’ determination of the  
8 Property’s fair market value. During the period Brown was making payments to Yu, Yu filed a  
9 property tax return on February 3, 2014, which attested that the total value of the Property was  
10 \$500,000, an action that triggered a review by the Richmond County Board of Assessors.<sup>16</sup> As a  
11 result, the Assessor’s office decreased its determination of the Property’s fair market value to  
12 \$1,027,925 on April 3, 2014, based on a recalculation of the relevant square footage and acreage  
13 on which the land value is based.<sup>17</sup> Subsequently, on February 15, 2017, the Yus listed the  
14 Property for sale for \$890,000, which elicited only two offers before they decided to take it off  
15 the market in early 2018: a \$400,000 cash purchase offer and a letter of intent proposing to  
16 purchase the property for \$700,000. Yu filed an appeal with the Richmond County Board of  
17 Assessors on May 2, 2018, seeking to lower the county’s fair market value determination further,  
18 from \$1,027,925 to \$850,000.<sup>18</sup> The appeal was denied.<sup>19</sup>

---

<sup>16</sup> See Richmond County Board of Assessors Documents (June 4, 2018) (“2018 Richmond Co. Assessors Docs.”).

<sup>17</sup> See 2018 Richmond Co. Assessors Docs. Prior to that, the fair market value of the Property as determined by the Richmond County Board of Assessors was \$1,043,175, below the Contract’s stated value of \$1.3 million.

<sup>18</sup> See 2018 Richmond County Assessors Documents.

<sup>19</sup> Richmond County Board of Equalization Decision (Sept. 25, 2018).

1                   **3.     The Committee and Yu Accepted Excessive Contributions from**  
2                   **Wayne B. Brown**

3  
4           A contribution is any gift, subscription, loan, advance, or deposit of money or anything of  
5 value made by any person for the purpose of influencing any election for Federal office.<sup>20</sup>

6   During the 2014 election cycle, the Federal Election Campaign Act of 1971, as amended (the  
7 “Act”) prohibited any person from making contributions to any candidate and the candidate’s  
8 authorized political committee with respect to any election for Federal office which, in the  
9 aggregate, exceeded \$2,600.<sup>21</sup> In addition, the Act prohibits any candidate or political committee  
10 from knowingly accepting any contribution or making any expenditure in violation of the  
11 provisions of Section 30116.<sup>22</sup>

12           Federal candidates may make unlimited contributions from their own “personal funds” to  
13 their authorized campaign committees.<sup>23</sup> The Act and Commission regulations provide that  
14 “personal funds” are (a) amounts derived from any asset that, under applicable State law, at the  
15 time the individual became a candidate, the candidate had legal right of access to or control over,  
16 and with respect to which the candidate had legal and rightful title or an equitable interest; and  
17 (b) income received during the current election cycle of the candidate, including proceeds from  
18 the sale of the candidate’s investments.<sup>24</sup>

<sup>20</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>21</sup> See 52 U.S.C. § 30116(a)(1)(A); Contribution Limits for 2013-2014,  
<https://www.fec.gov/updates/contribution-limits-2013-2014>.

<sup>22</sup> 52 U.S.C. § 30116(f).

<sup>23</sup> 11 C.F.R. § 110.10.

<sup>24</sup> 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33(a), (b).

1           The Act also provides that “any candidate . . . who receives a contribution, or any loan in  
2 connection with the campaign of such candidate for election . . . shall be considered, for purposes  
3 of [the] Act, as having received the contribution or loan . . . as an agent of his or her authorized  
4 committee.”<sup>25</sup> Here, the evidence obtained during the investigation shows that Brown’s  
5 payments under the Contract were intended to provide funds for Yu’s campaign, and the weight  
6 of the evidence indicates the payments were effectively a loan to Yu, rather than the proceeds  
7 from a *bona fide*, arms-length real estate sale. The evidence the Commission obtained is similar  
8 to evidence gathered in prior enforcement matters where the Commission reviewed the facts and  
9 circumstances surrounding specific financial transactions to determine whether they were  
10 contributions.<sup>26</sup> Based on the evidence here, the \$555,000 in payments that Brown made to Yu,  
11 which were then used for campaign expenses, were not Yu’s personal funds and constitute  
12 excessive contributions by Brown.

13           Bank records corroborate Yu’s statement that Brown’s payments were to provide funds to  
14 the Committee as needed, and the Contract was structured to provide Yu with the means to do so.  
15 They show that most of Brown’s payments under the Contract were made when the Committee  
16 needed funds to cover its expenses or when its account was overdrawn. Significantly, 90% of  
17 Brown’s payments to Yu on or after October 1, 2013, were made when he was in a position to  
18 know the Committee’s finances because he signed most of the Committee’s checks after  
19 becoming an account signatory, effectively acting in the manner of a treasurer. For example:

- 20           • Yu deposited Brown’s November 25, 2013, check for \$50,000 into his joint  
21 account, withdrew \$20,000 from the account the next day and immediately  
22 deposited those funds into the Committee account when its balance was only

---

<sup>25</sup> See 52 U.S.C. § 30102(e)(2); see also 11 C.F.R. § 101.2(a).

<sup>26</sup> See *supra* note 12.

1           \$1,005.21.<sup>27</sup> The deposit ensured sufficient funds were available to cover four  
2           Committee checks dated November 26 and 27, 2013, and signed by Brown,  
3           including a \$10,712.50 check to one of the Committee's major vendors;  
4

- 5           • Yu deposited Brown's December 10, 2013, check for \$25,000 into his joint  
6           account, and the next day, he withdrew \$25,000 from the account and deposited  
7           it into the Committee account when the Committee's account balance was only  
8           \$2,371.38. Those funds were needed to cover a \$21,744.70 check to the  
9           Committee's lawyer dated December 10, 2013, that Brown had signed;

- 10  
11          • Following Yu's decision to run for a House seat instead of the U.S. Senate seat,  
12          Yu deposited into his joint account a \$20,000 check dated March 12, 2014, and  
13          a \$250,000 check dated March 24, 2014, both from Brown. Yu then wrote two  
14          checks to the Committee in the amounts of \$20,000 and \$240,000 that were  
15          deposited into that account on March 13, and March 27, 2014, when the account  
16          balances were \$3,704 and \$5,142.20, respectively. These two checks comprised  
17          95% of the funds deposited into the Committee's account in March and April  
18          2014 and were sufficient to cover the \$206,066 in Committee disbursements  
19          made during those months; and

- 20  
21          • Yu deposited into his joint account two checks from Brown dated May 14 and  
22          May 15, 2014 in the amounts of \$30,000 and \$40,000, respectively. On the  
23          same day, he then wrote and deposited two checks to the Committee in the same  
24          amounts. At the time the \$30,000 check was deposited into the Committee  
25          account, the account was overdrawn by \$1,361.45. Brown's checks comprised  
26          95% of the receipts deposited into the Committee's account in May 2014, the  
27          month of the primary election.

28  
29           The record also supports Yu's statements to us that the transaction involving the Property  
30           was in effect a loan. First, Brown's early, contemporaneous notations of the word "loan" on the  
31           memo lines on two of Brown's early checks to Yu are consistent with Yu's interview account.  
32           Brown's "Bertram Road Purchase" notations on his May 2014 checks to Yu carry less weight  
33           because they were made after the Committee's first counsel filed the January 23, 2014, *Sua*  
34           *Sponte* Submission in which the Committee represented that Brown's payments were "collateral

---

<sup>27</sup>           The Yus also made a \$5,000 phone payment from the joint account to Bank of America following the deposit of Brown's \$50,000 check. The payment was applied to the balance on Ms. Yu's credit card that was used to pay campaign expenses.

1 payments” from Brown to Yu under “what they have represented to us as a *bona fide* business  
2 agreement” to purchase real estate.<sup>28</sup>

3 Importantly, Yu and the Committee admit, and land records confirm, that the Yus have  
4 never conveyed or recorded title to the Property to Brown for his purported ownership interest, a  
5 fact inconsistent with one of the hallmarks of a real estate sale. Moreover, Richmond County  
6 property records confirm that no deed has been conveyed and recorded more than four years after  
7 Brown’s last payment under the Contract.<sup>29</sup>

8 Finally, the fact that the Brown did not obtain an independent appraisal prior to entering  
9 into the Contract, a customary step in purchasing real estate to determine its fair market value,<sup>30</sup>  
10 the Yus’ actions with the Richmond County Board of Assessors to lower the Property’s fair  
11 market value, and the Yus’ unsuccessful listing of the property for \$890,000, substantially less

<sup>28</sup> *Sua Sponte* Submission at 1-2..

<sup>29</sup> In addition to the fact that the Yus’ have not conveyed to Brown his ownership interest or recorded a deed evidencing it, a search of Richmond County real estate records reveals no record that a real estate transfer tax was paid in connection with the purported sale, which is required under Georgia law. Georgia law imposes a real estate transfer tax “on each deed, instrument or other writing by which any lands . . . or other realty sold is . . . transferred or otherwise conveyed to the purchaser” when the value of the interest or property conveyed exceeds \$100. Ga. Code Ann. § 48-6-1. Payment of a transfer tax is a prerequisite to recording a deed, and it is a misdemeanor to willfully evade or defeat “in any manner” the payment of the transfer tax. *See* Ga. Code Ann. §§ 48-6-4; 48-6-10. A contractual provision that permits an indefinite delay in conveying an ownership interest and recording a deed therefore appears problematic.

<sup>30</sup> The Commission has recognized the importance of an independent appraisal in determining the fair market value of property when deciding whether a candidate sold it for more than the fair market value, thus resulting in an excessive contribution. For instance, in MUR 4825, discussed at note 12, the Commission authorized the Office of General Counsel to expend funds to obtain an independent appraisal of the fair market value of the respondent’s property in evaluating whether its sale was a contribution. *See* Certification ¶ 2 (July 24, 2001) and General Counsel’s Report #3 at 2-3, MUR 4825 (Gex Williams) (describing Commission’s instructions to OGC and results of the appraisal and title examination). *See also* Adv. Op. 1984-60 (Mulloy) at n.5 (Jan. 11, 1985) (noting that the Commission would view an appraisal by an expert using an acceptable appraisal methods as *prima facie* evidence of the property’s usual and normal market price but would not rule out “the use of other valuation methods that would reliably establish such price or value.”).

1 than the \$1.3 million value on placed on the Property in the Contract, cast doubt as to whether  
2 the Contract was a *bona fide* sale for a 50% ownership interest of \$650,000.<sup>31</sup>

3 In sum, the campaign purpose of the Contract is supported by the timing of Brown's  
4 payments, virtually all of which were made when the campaign account balance was very low,  
5 and most of which were made when Brown was the campaign chairman and acting in the manner  
6 of a treasurer, handling the Committee's finances and signing its checks. The evidence,  
7 including the "loan" memo notations, the failure to obtain an independent appraisal of the  
8 Property or convey marketable title and a limited warranty deed, and the Yus' attempts to  
9 decrease the value of the Property on a real estate sale listing and by seeking a lower property  
10 assessment, further cast doubt that the transaction between Brown and the Yus was a *bona fide*  
11 sale of property rather than a loan.

12 Under the Commission's regulations, a contribution by an LLC with a single natural  
13 person member that does not elect to be treated as a corporation by the Internal Revenue Service  
14 shall be attributed only to that single member.<sup>32</sup> Accordingly, there is reason to believe that the  
15 \$555,000 Yu received from Brown and WayneWorks and transferred to the Committee or  
16 otherwise used to pay Committee expenses were not Yu's personal funds but instead proceeds of

<sup>31</sup> To the extent the transaction between Brown and the Yus could be considered a *bona fide* sale, Brown appears to have paid more than the fair market value, resulting in an excessive contribution. The Commission has considered when the sale of a candidate's interest in real property constitutes a contribution in the context of a proposed plan by a candidate to retire campaign debt by selling his interest in real estate held in a family-owned partnership to either an outside party or a family member, noting that a candidate's personal funds include proceeds from the sale of a candidate's investments. AO 1984-60 at 2. The Commission determined that a contribution would occur where (1) a candidate sells a property to use the proceeds to pay campaign expenses and debts and (2) the property is sold for price greater than the property's "normal and usual market price." *Id.* As Brown observes in his response, the Commission has equated the term "fair market value" as used to refer to real property with the "usual and normal cost" standard in 11 C.F.R. § 100.52(d)(1). Commission regulations define "the usual and normal" cost as the price of goods in the market from which they ordinarily would have been purchased at the time of the contribution. *Id.*

<sup>32</sup> See 11 C.F.R. § 110.1(g)(4).

1 a loan from Brown, and thus, a contribution. Brown had made a direct \$3,500 contribution to Yu  
2 on July 3, 2013, \$900 more than the 2014 per-election contribution limit, which was not refunded  
3 after Yu lost the primary election. Therefore, the Commission finds reason to believe that the  
4 Committee and Yu accepted excessive contributions.

5 **B. Jonie Yu's Contributions**

6 The Committee and Yu used funds provided by Jonie Yu by paying for campaign  
7 expenses using her personal credit card account and by transferring funds originating from a  
8 draw on Ms. Yu's individually-owned HELOC to the Committee through the Yus' personal  
9 account. As discussed below, both the credit advances and HELOC funds constitute  
10 contributions to Yu's campaign.

11 **1. Credit Card Advances**

12  
13 Early in his bid for U.S. Senate, Yu carried with him and began using Ms. Yu's personal  
14 Bank of America credit card, held solely in her name, to pay for campaign expenses.<sup>33</sup> Yu gave  
15 the credit card bills to campaign staff to track campaign expenses for which he intended to be  
16 reimbursed, and staff later used the card to pay on-line campaign expenses since they had access  
17 to the credit card number. Yu says the card was used solely for campaign expenses during this  
18 period.

19 Bank records and Committee reports show that Yu and the Committee charged  
20 \$91,085.81 in total campaign expenses on Ms. Yu's personal credit card account between  
21 May 27, 2013, and January 19, 2014, when its \$55,000 credit limit had been exceeded. The

---

<sup>33</sup> Yu initially said that the credit card was his before clarifying that it was in Ms. Yu's name. In an interview, Yu said that he was an authorized user on the account. However, bank records do not indicate that an additional card was issued or that Yu was listed as an authorized user on Ms. Yu's account.

1 credit card was used to pay travel expenses, such as transportation, meals, and lodging, as well as  
2 social media advertising, direct mail, television advertising, and campaign signs.

3       The Committee paid off \$30,365 of the total credit card charges and the Yus eventually  
4 repaid the remainder using personal funds from their joint account, mostly with checks written by  
5 Ms. Yu. Ms. Yu fully paid the first two credit card bills shortly after the statement dates, using  
6 money from the Yus' joint account.<sup>34</sup> Beginning after the September 25, 2013, credit card bill,  
7 however, the Committee made small, occasional payments toward the outstanding balance, and it  
8 missed some monthly payments altogether, causing finance charges and late fees to accrue. The  
9 balance due on Ms. Yu's credit card fluctuated between \$69,374.66 and \$60,104.77 for more  
10 than ten months between the January 27, 2014, bill, when Yu and the Committee stopped using  
11 the credit card, and December 4, 2014, when the Yus made the first of two substantial payments  
12 to pay off the outstanding balance. To make these payments — \$45,000 on December 4, 2014,  
13 and \$15,671 on January 7, 2015 — the Yus used the proceeds of life insurance policies they  
14 cashed in.<sup>35</sup> The latter payment was made by Ms. Yu using proceeds from a check payable solely  
15 to her. The total charges made on Ms. Yu's credit card that are attributable to Committee  
16 expenses, including interest and late fees, are \$105,385.51.<sup>36</sup>

<sup>34</sup> Ms. Yu used the proceeds from a \$10,194.13 Committee reimbursement check payable to her and deposited into the Yus' joint bank account to pay the balance due on the second credit card bill. The reimbursement check appears to be in significant part for charges made on Ms. Yu's credit card for campaign expense incurred in the June 27-July 26, 2013 billing period for Mr. Yu's travel, food, and lodging; meals for campaign events; and a conference sponsorship fee. *See* Amended 2013 October Quarterly Report at 20, 25 (Aug. 29, 2014).

<sup>35</sup> Yu stated the credit card balance was paid off with proceeds from a life insurance policy he cashed in. His statement is corroborated by bank records, which appear to show that both Yus cashed in life insurance policies. Two checks from Ohio National Financial Services, Ohio National Life Assurance Co. were deposited into the Yus' personal account prior to the Yus' final credit card payments: a \$45,886.22 check payable to Yu dated November 25, 2014 and an \$18,907.38 check payable to Jonie Yu dated December 14, 2014.

<sup>36</sup> Finance charges of \$13,959.67 and \$340 in late fees had accrued before the credit card balance was paid.

1            Payments by an individual from her personal funds, including a personal credit card to  
2 provide or obtain goods and services used by or for a political committee is considered a  
3 contribution unless certain exemptions apply.<sup>37</sup> These exemptions apply to certain travel and  
4 subsistence expenses incurred by individuals traveling or conducting volunteer campaign activity  
5 on behalf of a campaign, including a \$1,000 per election travel expense exemption;  
6 unreimbursed subsistence payments incurred in connection with a volunteer's campaign activity;  
7 and non-volunteer transportation and subsistence expenses paid with an individual's credit card if  
8 reimbursed within 60 days.<sup>38</sup>

9            As the account holder of the personal credit card that Yu used to pay for goods and  
10 services for the Committee, Ms. Yu made contributions in the form of credit card advances that  
11 the Committee accepted. The Commission's regulatory exemptions do not apply to any of the  
12 credit card charges for the Committee's advertising. Additionally, none of the exemptions  
13 appear to apply to any of the travel-related charges. According to Yu, Ms. Yu did not work for  
14 and was not a volunteer for the campaign so it appears that none of the credit card charges for  
15 transportation, food and lodging were for Ms. Yu's own travel and subsistence expenses.<sup>39</sup>  
16 Because Ms. Yu did not previously make a direct contribution to the Committee, the total

---

<sup>37</sup> 11 C.F.R. § 116.5(a).

<sup>38</sup> See 11 C.F.R. §§ 100.79(a) (\$1,000 per election travel exemption), 100.79(b) (unreimbursed volunteer subsistence payments), and 116.5(b) (non-volunteer transportation and subsistence expenses paid by credit card and timely reimbursed within 60 days).

<sup>39</sup> Yu's statement is corroborated in part by the absence of any salary payments to Ms. Yu in the Committee's bank records and a single \$10,194 reimbursement check from the Committee to Ms. Yu in August 2013 that appears to have been in substantial part for credit charges made on Ms. Yu's credit card for Committee expenses. Moreover, Ms. Yu does not state in her response to our April 20, 2018, notification letter that any of the credit card charges were incurred for her own travel and subsistence expenses even though the letter summarizes and cites to the exemptions and included copies of the credit card statements. See Response of Jonie Yu (June 1, 2018) ("Jonie Yu Resp.") (referring only to an "on demand loan," an apparent reference to the HELOC draw).

1004440001

1 amount of her contributions would be reduced by \$2,600.<sup>40</sup> Subtracting that amount from the  
2 total amount Ms. Yu advanced to the Committee, the evidence shows that she made and the  
3 Committee accepted, \$102,785.51 in excessive contributions in the form of credit card advances.  
4 Of those excessive contributions, \$15,671, the amount of the last credit card payment made by  
5 Ms. Yu using proceeds from her cashed-out life insurance policy, remains unreimbursed or  
6 unrefunded.

## 7 2. HELOC Draw

8 On July 17, 2013, six days after Yu filed his Statement of Candidacy for the Senate  
9 election, a \$50,000 draw on a HELOC in Jonie Yu's name was transferred to the Yus' joint bank  
10 account. On the same day, Yu wrote a \$50,000 check to the Committee drawn on the joint  
11 account and deposited it into the Committee's account. The HELOC was a pre-existing  
12 \$128,000 line of credit established in 2004 and secured by the Yus' personal residence, which is  
13 100% owned by Jonie Yu.<sup>41</sup>

14 Yu acknowledged that he accessed funds from his wife's HELOC to fund his campaign.  
15 Jonie Yu acknowledges that she made an "on demand" loan to the Committee and expected it to  
16 be repaid after the election, but the Committee had no funds to repay it when Yu lost the 2014

<sup>40</sup> See 52 U.S.C. §§ 30116(a)(1)(A) (contribution limit), 30116(f) (prohibition on knowing receipt of contributions in excess of limits); Contribution Limits for 2013-2014, <https://www.fec.gov/updates/contribution-limits-2013-2014>. This limit applies to a candidate's family members. See *Buckley v. Valeo*, 424 U.S. 1, 51 n.57, 53 n.59 (upholding the constitutionality of contribution limits as to family members, reasoning that, "[a]lthough the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as non-family contributors").

<sup>41</sup> See Warranty Deed between Eugene Chin Yu and Jonie Hung Yu (Nov. 12, 1998) (whereby Yu transfers to Ms. Yu his one half-interest in their residence, 4349 Miller Dr.); Security Deed between Ms. Yu and SouthTrust Bank (Feb. 12, 2004) (showing the Yu residence secures a revolving line of credit not to exceed \$128,000). As a result of a series of bank mergers, the HELOC is now with Wells Fargo Bank.

1 election.<sup>42</sup> As the funds Yu transferred to the Committee were not his personal funds,<sup>43</sup> they  
2 constitute an excessive contribution from Ms. Yu to Yu and the Committee.

3 In light of the excessive contributions arising from the credit card advances and the  
4 HELOC draw, the Commission finds that Jonie H. Yu made, and the Committee knowingly  
5 accepted, excessive contributions in violation of 52 U.S.C. § 30116(a) and (f), respectively.

---

<sup>42</sup> Jonie Yu Resp.

<sup>43</sup> 52 U.S.C. § 30101(26); 11 C.F.R. § 101.2(a).

1004444000